

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

IN RE: THE APPEAL of the  
QUEEN ANNE COMMUNITY COUNCIL of  
the

FINAL ENVIRONMENTAL IMPACT  
STATEMENT for the CITYWIDE  
IMPLEMENTATION OF ADU-FEIS

NOTICE OF APPEAL OF ADU-FEIS  
FINAL ENVIRONMENTAL IMPACT  
STATEMENT

The Queen Anne Community Council appeals the adequacy of the Final Environmental Impact Statement prepared for the proposed amendments to Accessory Dwelling Unit legislation.

**APPELLANT INFORMATION**

**Appellant:**

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(Contact only through authorized representative)

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## **DECISION BEING APPEALED**

**Decision:** The legal adequacy of the Final Environmental Impact Statement dated October 4, 2018 for the Citywide Implementation of the ADU-FEIS, which is available at: <http://www.seattle.gov/council/adu-eis>.

**Property Address:** City wide

**Elements of Decision being appealed.** (Also see discussion below re objections to decision)

- a. Adequacy of EIS
- b. Violations of SEPA

## **APPEAL INFORMATION**

### **1. Interest of Appellant in the decision (Standing)**

- 1.1 The City of Seattle is a collection of over 30 distinct and diverse neighborhoods that form the historical heart and soul of our entire city. Each of these neighborhoods is recognized and buttressed by its unique environmental qualities, cultural and historical identities, discrete topography and challenging infrastructure, unique mixes of businesses, multi-family and single-family housing, green space and tree canopy, water and sun orientation, among a gifted host of other unequalled assets that have defined our city of Seattle for well over a century.
- 1.2 The Queen Anne Community Council (QACC), one of the oldest and most active community organizations in Seattle, represents over 30,000 residents and business owners within our Queen Anne neighborhood. A registered a 501(c)(4) organization, the QACC advocates on a range of issues, including urban development and planning, transportation concerns, protection of our trees and parks, etc. Like community councils city-wide, QACC is the steward of our Queen Anne Neighborhood Plan that residents have counted on since the late 1970's to guide our future development growth, along with many other issues of livability as codified within our City's Comprehensive Plan.
- 1.3 Our stewardship running back over 75 years, has always been characterized by welcoming growth and increased density, but also respecting the important qualities of our neighborhoods throughout our City. In fact, going back decades to when PSRC began forecasting growth as mandated by the GMA, Queen Anne has always gladly accepted more density than directed its way. Over 30 years ago we participated with thousands of Seattleites across the city in what became a national model of Neighborhood Planning.

- 1.4 These Neighborhood Plans grew out of incredible commitments by each Seattle neighborhood to identify and carefully craft and codify within the city's Comprehensive Plan the specific qualities, goals, issues and opportunities of each community throughout our city. Hundreds of thousands of Seattleites have relied upon these plans for decades as they chose neighborhoods within which to live, raise their families, and invest their time, public service, and personal resources.
- 1.5 The proposed legislation contains provisions that will eliminate single-family zoning in Queen Anne and within every neighborhood throughout the City. It ignores, disrespects, and eliminates the city-wide Neighborhood Plans. This unprecedented and wholesale land use change will negatively impact over 135,000 single family properties and over 350,000 residents that choose to live in single-family homes in Seattle's neighborhoods.
- 1.6 Representing its members and speaking for over 350,000 Seattleites that reside in single-family neighborhoods throughout Seattle, the Queen Anne Community Council appealed the City's SEPA determination of non-significance (DNS) on June 6, 2018 issued by the Director, Office of Planning and Community Development. Hearing Examiners File No. W-16-004.
- 1.7 In May 2018, The City had proposed to up-zone and eliminate every Seattle single-family zoned neighborhood without performing one environmental impact study, any citywide public meetings, and hearings focused upon the up-zone proposal, and stealthily advanced this legislation with a SEPA determination of non-significance (DNS).
- 1.8 On June 6, 2018, the Queen Anne Community Council appealed the determination of non-significance (DNS) issued by the City for the proposed legislation to reduce the regulations controlling the development of attached and detached accessory dwelling units (ADU).
- 1.9 On December 13, 2016, The Hearing Examiner rendered her decision granting Queen Anne's appeal. The City waited over six months and then committed to preparing a full EIS, which was not released in final form until nearly two years later. The Hearing Examiner's decision was crystal clear identifying many positions and policies that were proven false and/or required serious, comprehensive, and accountable studies of every environmental impact.
- 1.10 The Queen Anne Community Council unequivocally supports the city's goals of increasing affordability, diversity of housing choices, and considerations of equity in Queen Anne and throughout our city in every neighborhood. However, the

ADU-FEIS fails to consider many reasonable alternatives to the current Backyard Cottage policies and in doing so fails to disclose, discuss and analyze significant, adverse environmental impacts that the proposal will impose on all Queen Anne residents and within every other Seattle neighborhood, including adverse impacts upon the displacement and destruction of older, more modest and affordable housing, the displacement of populations, the loss of historic buildings, the change in neighborhood character and loss of tree canopy, the amount of available on-street parking, and the ability to circulate through neighborhood streets, and other population pressures, which impacts would be visited upon members of the Queen Anne Community Council and other residents of the Queen Anne neighborhood should the proposed legislation be enacted.

- 1.11 The “alternatives” presented in the EIS are not alternative ways to meet the HALA housing objectives, but only alternative ways to implement a single goal and strategy of eliminating single-family zoning while increasing the development and conversion of every single-family neighborhood. The only alternative considered for reaching the objectives of the EIS is broad up-zoning in neighborhoods across the city. Required alternatives were not seriously considered or presented in the EIS as required by law
- 1.12 The EIS fails to consider and present genuine alternatives as required by SEPA. The EIS instead treats the entire city as one homogeneous landscape failing to differentiate between well over 30 individual unique neighborhoods. The EIS treats all neighborhoods exactly the same and ignores the historical context of each, the unique qualities and topography of each, the differentiation in predominant lot size, affordability, parking availability, transportation choices, adjacencies to open space and tree canopy, among many others. Additionally the EIS ignores and in fact eliminates individual Neighborhood Plans codified over three decades that served as a guaranty underpinning over 350,000 citizen investments of time and resources to leverage the best in life’s quality, special neighborhood character, and a secure and safe living environment.
- 1.13 The only choices and alternatives presented for consideration in the EIS were up-zoning the entire city’s wealth of single-family properties. As will be shown at the hearing of this matter, available alternatives were not considered in the EIS.
- 1.14 The only alternatives considered in the EIS were minor variations in how to eliminate single-family zoning and neighborhoods. No alternative ways to meet the City’s housing goals were considered in the EIS. This is a significant deficiency and failure to fulfill the environmental review requirements of SEPA.
- 1.15 By failure to prepare a legally sufficient EIS, the Queen Anne Community Council and its members have suffered procedural harm in that the City has

denied them the statutory rights of producing a fully compliant EIS and is embarking upon a path of decision-making not fully informed.

**2. Objections to the decision.**

The Queen Anne Community Council appeals the legal adequacy of the ADU-FEIS on the following grounds:

- 2.1 The FEIS fails to adequately disclose, discuss and analyze the direct, indirect and cumulative impacts of the proposed actions in conjunction with the City of Seattle and the State of Washington guaranteed rights and opportunities to be involved in government processes, especially those involving environmental and land use decisions. The credibility and effectiveness of land use decisions depends upon a fair and open process. Adherence to a fair process is recognized in Washington and federal courts as requiring procedural due process.
- 2.2 The FEIS fails to adequately disclose, discuss and analyze the direct, indirect and cumulative impacts of the proposed actions in conjunction with the harms caused to Queen Anne residents and businesses, and all Seattleites that include, but are not limited to: reductions in currently available affordable housing, an increase in housing costs with a corresponding reduction in diversity and equity for residents, increases in housing costs for existing residents penalizing those with low and fixed incomes including seniors, increases in density and its impacts without appropriate mitigation and supporting infrastructure, and a decline in quality of life and livability for current and future residents.
- 2.3 The FEIS fails to consider cumulative impacts of the proposed actions in conjunction with other significant land use changes as proposed within HALA, MHA, and other legislation.
- 2.4 The FEIS fails to consider an adequate range of alternatives that specifically consider the geographic, topographic, and locational differentiation of the city of Seattle. The unique qualities, historical and cultural identities, average property sizes, infrastructure adequacy and mobility limitations, open space and tree canopy, parking availability and restrictions, among many others were ignored as the City proposed a one-size-fits-all conversion of all neighborhoods.
- 2.5 The FEIS fails to consider an adequate range of alternatives that could accomplish the proposal's objectives, but at a lower level of environmental impact, as further alleged under Part 1 above.
- 2.6 The FEIS fails to disclose, discuss and analyze the limitations, uncertainties and

data gaps within its deficient and purposefully misleading analysis of parking and transportation and include a comprehensive city-wide, worst-case analysis. For instance, Appendix B, Exhibit B-1 illustrates the four areas of the city that were chosen to study as a representative sample of typical impacts to parking. These four study areas are located miles away from our city center and ignore neighborhoods most impacted by the ADU-EIS proposal. They bear little relationship to neighborhoods like Capitol Hill, Magnolia, Wallingford, Fremont, Queen Anne, University District, First Hill, Central Area, Columbia City, Ballard and many others.

- 2.7 The FEIS fails to disclose, discuss and assess the limitations, uncertainties and data gaps within its deficient analysis of environmental impacts associated with allowing 12 unrelated individuals to reside on one property. A subject property could be as small as 3,200 sq ft. John Shaw, City of Seattle Traffic Engineer testified during Queen Anne's Appeal in Case W-16-004 that the average Seattle family has at least 1.2 cars. Matt Hutchins, Architect and City expert testified that he shared a house in a single-family neighborhood with six people – all of whom had cars. The FEIS is silent and deficient in considering the potential severe environmental impacts upon parking and traffic circulations from increases in unrelated residents occupying one property.
- 2.8 The FEIS fails to consider an adequate range of alternatives that specifically consider the removal of the Owner-Occupancy requirement. The FEIS provides no comprehensive background studies to support the EIS contention that removal of owner occupancy requirements will have no environmental impacts. Sam Lai and Matt Hutchins, the City's developer and architect experts, agreed with Appellant expert Bill Reid, Real Estate Economist, that the removal of the owner-occupancy requirement would contribute to influencing a "fundamental change to the land-use form." Mr. Lai's own company buys undervalued single-family homes and converts them to new market rate speculative investments. The FEIS is deficient in failing to address the significant environmental impacts upon the existing housing stock and its owners and occupants related to the removal of the owner occupancy requirement.
- 2.9 The FEIS fails to consider an adequate range of alternatives that specifically considers the potential environment impacts associated with stresses upon Public Services and Utilities. The FEIS relies upon a simple premise that this legislation will only produce a minimal number of ADUs and due to their distribution city-wide, there will be no environmental impacts. On the other hand, during the Appeal in Case W-16-004, Nick Welch, City Planner acknowledged in email that the intent of this legislations is to "unleash growth in every single-family" neighborhood. So, while the City claims, without specific neighborhood studies, data or proof, that there will be no impacts, the stated goals and objectives of the legislation absolutely contradict that assertion. OPCD's determination on the

proposal's likely public service impacts is not based on information sufficient to evaluate those impacts.

- 2.10 The FEIS fails to complete an adequate study of Housing and Socio Economics as presented within the EIS section 4.1. This section relies upon a study of 'Highest and Best Use' to present non-impact conclusions concerning Displacement, Affordability, Land Values, Valuations, ADU Production Forecasts, Teardowns, Owner Occupancy and other environmental impacts. On FEIS Page 4-13 the City defines: (emphasis added)

*A highest and best use analysis evaluates the reasonable use of a property based on what is physically possible, is financially feasible, and results in the highest present value.*

*To analyze how alternatives might affect underlying development conditions in the study area, we used highest and best use analysis. This analysis considers how the potential Land Use Code changes could alter the highest-value use of a property. In other words, this approach evaluates how the proposed alternatives would affect underlying development economics for lots in Seattle's single-family zones. This analysis identifies the most economically productive use for a particular site, but it does not necessarily predict what will actually happen on a site. This is because it does not consider the motivation and preferences of individual property owners or market demand for a particular real estate product (e.g., an AADU or a single-family house). Thus, highest and best use can tell us how the alternatives could change the underlying real-estate economics in the study area, but it does not predict specific development outcomes for a given parcel or tell us how the alternatives could affect overall development rates in the study area.*

The Highest and Best Use analysis, forming the basis for many of the FEIS findings of no environmental impacts, is deficient as the EIS clearly reveals that their analysis – “does not necessarily predict what will actually happen on a site.” It fails to consider the true impacts upon every neighborhood including the elimination of the owner-occupancy requirement and of parking requirements and the potential speculative investments that will redefine highest and best use, among many others.

- 2.11 The FEIS fails to consider an adequate range of alternatives that specifically considers the impacts from allowing 3 dwelling units on one property. The FEIS addresses the City proposal to up-zone every neighborhood and ignore the unique characteristics of each. In doing so, the FEIS is deficient in that it fails to recognize the extraordinary issues and opportunities associated with neighborhoods having a variety of lot sizes. While some larger properties could easily accommodate multiple units and an increased number of unrelated residents, many other neighborhoods with smaller lots would suffer from extreme

environmental impacts from increasing densities of 12 residents per property, three units on a site, and no on-site parking or ownership requirements.

- 2.12 The FEIS fails to consider an adequate range of alternatives that specifically considers impacts from increasing the rear lot coverage by 50% from 40% to 60%. The FEIS fails to consider in a meaningful way the impacts to neighbors and the tree canopy as well. This increase in rear lot coverage fails to consider the cumulative impacts from allowing 2 separate 1,000 sq ft DADU's plus a home on one site while allowing an unlimited sized garage as well. While reliance upon a 35% lot coverage limitation on lots greater than 5,000 sq ft may be acceptable, the increase lot coverage on smaller lots would create significant adverse impacts on neighborhood character, aesthetics, urban design and tree canopy coverage that are not sufficiently disclosed, discussed and analyzed. Proposed lots of 3,200 sq ft actually allow for a significantly higher, 46% lot coverage which has not been considered.
- 2.13 The FEIS fails to consider an adequate range of alternatives that specifically consider the impacts to preserving the tree canopy.
- 2.14 The FEIS fails to consider an adequate range of alternatives that specifically consider the impacts from limiting the size of homes by establishing a new floor area ratio of .5 (FAR) standard that limits the maximum size of new single-family homes to 2,500 sq ft. for a 5,000 sq ft lot. 4,000 sq ft lots have a maximum of 2,000 sq ft. While the city posits that this legislation is founded upon creating higher densities in single-family neighborhoods, this new restriction limits density to those who would have no desire to add onto an existing 2,500 sq ft home.
- 2.15 The FEIS fails to adequately disclose, discuss and analyze the direct, indirect and cumulative impacts upon the elements of the environment (SMC 25.05.44) including upon the displacement and destruction of older, more modest and affordable housing, the displacement of populations, the loss of historic buildings, the change in neighborhood character, the unstudied stresses on existing utilities and infrastructure, the amount of available on-street parking, and the ability of residents and emergency vehicles to circulate through neighborhood streets, and other population pressures among many more.

### **3. What relief do you want?**

The Queen Anne Community Council requests that:

- 3.1 The ADU-FEIS be found to be legally inadequate;

- 3.2 The EIS should be remanded to the OPCD to bring it into full compliance with SEPA;
- 3.3 Further action on the proposal be stayed pending OPCD's full compliance with SEPA;
- 3.4 The Queen Anne Community Council reserves the right to seek such other, further relief as may be appropriate under the law including an award of attorney's fees and costs in the appropriate forum.

Respectfully submitted this 18<sup>th</sup> day of October, 2018.

QUEEN ANNE COMMUNITY COUNCIL

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